

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DENISE SHAIBLE,	:	No. 98-20,764
Petitioner	:	
	:	PACSES #692002495
vs.	:	
	:	DOMESTIC RELATIONS
STEVEN L. BLAIR,	:	
Respondent	:	Support Exceptions

OPINION AND ORDER

This matter came before the Court on the Respondent's Exceptions to the Family Court Order of November 3, 1999. The relevant facts are as follows:

This matter involves three minor children. One of the minor children resides with Ms. Shaible and the other two minor children resides Mr. Blair. Ms. Shaible also has one minor child to her present husband who resides with them at home.

On or about May 20, 1999, Ms. Shaible filed a Petition for Modification of Child Support. On October 12, 1999, the Master held a hearing the petition. Ms. Shaible testified that she is 39 years of age. She graduated from high school and received a two-year degree from the School of Commerce in business administration. However, that training was numerous years ago. She has been employed in office work through temporary agencies and was a bartender for approximately one year. She was employed at Stone Container for three and one-half years until she went on disability in or about August of 1998. She was last employed at Value City from October 1998 until May 1999. She was working part-time approximately twenty hours per week at the rate of \$5.35 per hour. She stated she terminated that employment because she could not afford child care

and continue to work. At the time of the hearing, Ms. Shaible was enrolled as a student at the Empire Beauty School. This enrollment was a ten-month course through the office of Vocational Rehabilitation. Healthwise, she stated she had a herniated disc, bone spurs in her heels and carpal tunnel in her elbows. These medical problems prevented her from continuing employment at Stone Container. It also through these medical problems that she became involved with the Office of Vocational Rehabilitation.

Based on her being a full-time student and her health problems, the Master assessed Ms. Shaible a part-time minimum wage earning capacity of \$400 per month. To this figure he added an additional \$12.71 per month, which represented her portion of a joint tax refund.

Mr. Blair is employed by New MMI as a telemarketer/computer salesperson. He submitted, as Respondent's Exhibit 1, his year-to-date pay stub through September 30, 1999, which covered the first thirty-nine weeks of 1999. The Master found he had gross income of \$35,186.35. From that figure the Master deducted federal, state and local taxes totaling \$9,454.03 and arrived at a net monthly income of \$2,866.83. To that amount the Master added an additional \$98.58 per month which represented Mr. Blair's proportionate share of a joint tax refund. The Master did not add any additional income for Mr. Blair's part-time employment as a real estate agent because he did not have any sales in 1999. The Master also did not add any income from rental properties as they were operating at a loss.

Utilizing Ms. Shaible's earning capacity in the amount of \$412.71 and Mr. Blair's adjusted monthly net income in the amount of \$2,965.41, the Master found Mr. Blair

was responsible for child support for one minor child in the amount of \$613.25. Since Ms. Shaible's earning capacity in income was less than \$550, the Master did not order any child support obligation from Ms. Shaible for the two children in Mr. Blair's custody. The Master also did not require Ms. Shaible to make any contribution towards child care expenses.

In Mr. Blair's first exception he alleges that the Master erred in assessing Petitioner with a part-time minimum wage earning capacity of \$400 per month. This Court cannot agree. Ms. Shaible testified that she could no longer work at Stone Container due to health problems. Ms. Shaible's other work experience was generally part-time and at the minimum wage. At the time of the Master's hearing, Ms. Shaible was a full-time student at the Empire Beauty School. Ms. Shaible enrolled in this ten-month course through the Office of Vocational Rehabilitation. Although a Ms. Shaible has a two-year business administration degree from the School of Commerce, that training was approximately eighteen years ago. Based on these circumstances, the Court finds it is likely that Ms. Shaible would only have minimum wage earning capacity without further training. The Court also finds that Ms. Shaible's enrollment at the Empire Beauty School is likely to increase her employability and improve the situation of her minor children in the long run. Therefore, due to her health issues and being full-time student, the Court finds no error in the Master assessing a part-time minimum earning capacity of \$400 per month.¹

¹The Court notes that Mr. Blair contends the Master erred by failing to order Ms. Shaible to provide medical documentation to support her allegations of medical problems. The law in this Commonwealth, however, is that a party can testify to her medical condition, and medical documentation in support thereof is not required. See Malenfant v. Melenfant,

Next Mr. Blair contends that the Master erred in determining his monthly net income from his employment. This Court agrees. Mr. Blair's year-to-date pay stubs shows he had gross earnings of \$34,706.35. This figure included monies he received from opting out the insurance which would have been provided by his employer. The Court can find nothing in the record to support the Master's addition of \$480 to Mr. Blair's gross earnings. Therefore, the Court grants this exception and finds that the Respondent's monthly net income from his employment and the proration of tax refund is \$2,904.39.

Mr. Blair's third exception is that the Master erred in determining his child support obligation to Ms. Shaible. This Court agrees in part. Utilizing Ms. Shaible's net monthly income of \$412.71² and Mr. Blair's monthly net income of \$2,904.39, the parties have a total net monthly income of \$3,317.10. The present child support guidelines indicate that the base child support obligation for one minor child at this income level is \$384 plus 7.2% of all income above \$3,175.00. After making the necessary calculations, the support obligation of both parents for one minor child would be \$694.23.

Mr. Blair would be responsible for his proportionate share of that child support obligation. His proportionate share is determined by dividing his net monthly income by the total of both parties' net monthly income to arrive at a proportionate share of 87.56%. Multiplying the total support obligation of \$694.23 times .8756, results in a child support obligation due and owing by Mr. Blair for one minor child in the amount of \$607.87.

639 A.2d 1249 (Pa.Super. 1994).

²The \$412.71 was arrived by assessing Ms. Shaible a \$400 per month part-time minimum wage earning capacity and adding to that amount her prorated tax refund of \$12.71 per month.

Mr. Blair also argues that he should receive a deviation in his child support obligation. Basically, his argument is that although Ms. Shaible was assessed a earning capacity below \$550 when other income in her household is considered, she should either be required to pay support to Mr. Blair for the two minor child in his custody or his support obligation to Ms. Shaible for the one minor child in her custody should be adjusted downward. Mr. Blair's argument, however, fails to consider the other household income in his own household. While Ms. Shaible's total household income is approximately \$54,000, Mr. Blair's is approximately \$74,000. Under the facts and circumstances of this case, the Court does not believe a deviation based on household income is appropriate.³

Mr. Blair next contends that the Family Court Master erred by failing to hold Ms. Shaible responsible for paying child support to him for the two (2) minor children in his custody and by failing to make her responsible for any contribution toward childcare expenses. Since Ms. Shaible's earning capacity is currently less than \$550 per month, the Court finds no error in the Master's determination.

Mr. Blair also asserts that the Master erred by failing to hold Ms. Shaible responsible for a contribution to health insurance premium payments. The Master did not receive testimony the amount of the health insurance premiums being paid because Mr. Blair was not making these payments, his spouse was. In this case, the Court does not need to reach the issue of whether a party can be ordered to reimburse a stepparent, because the Petitioner currently has a earning capacity less than \$550 per month.

³Other household income was the only basis for deviation raised by Mr. Blair.

Mr. Blair's final exception is that the Master erred by ordering him to be responsible for 88% of all unreimbursed medical expenses when the parties' property settlement agreement provided that charges not covered by insurance would be divided between parties on a fifty-fifty basis. This Court cannot agree. The Court finds that unreimbursed medical expenses are an aspect of child support which is always modifiable despite the parties' agreement to the contrary.⁴ See Shirley by Shirley v. Javan, 684 A.2d 1088 (Pa.Super. 1996); Diehl v. Mulhem, 594 A.2d 692 (Pa.Super. 1991).

⁴The Court does not believe it is bound to follow the Honorable Nancy L. Butts' Opinion and Order wherein she ordered the medicals to be split on a fifty-fifty basis because that decision was entered prior to the April 1, 1999 amendments to the support guidelines. These amendments considered reasonable medical expenses in determining the basic child support guideline amounts; this is why the custodial is responsible for the first \$250 in unreimbursed medical expenses.

medical expenses.

By The Court,

Kenneth D. Brown

cc: Family Court
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